BOOKS AND PERIODICALS.

I. LEADING LEGAL ARTICLES.

EMPLOYER'S LIABILITY INSURANCE AND RIGHTS OF EMPLOYEES. — A recent writer treats some questions raised by the now very common employer's liability insurance: *Liability of Insurers and Rights of Employees under Employer's Liability Insurance Policies*, by Henry M. Dowling, 59 Cent. L. J. 5 (July 1). The situation presented when an employer with one of these policies goes into bankruptcy is interesting. In such a case the insurance company is liable if an injured employee has secured a judgment, even if the policy be one of indemnity against actual loss, for there has been a loss to the employer by the surrender for the benefit of creditors, of whom the employee is one. The amount of the insurer's liability will be a percentage of the employee's claim corresponding to the percentage the other assets will pay the other creditors, and he will be treated exactly like all the rest. *Traveler's Ins. Co.* v. *Moses*, 63 N. J. Eq. 260.

In the case of a policy of "indemnity against liability" the insurer will have to pay the full amount of the claim of the employee. What are his rights against the fund so produced? If he is to share in it as an asset, the other creditors will really be better off because of his misfortune. That is not the case with a policy against actual loss, and at first blush seems wrong. Why should not the injured man claim against the insurer directly, taking the full proceeds of the policy, which will be the amount of his claim? The asset seems a result of his injury. Mr. Dowling says: "This last result would be legally unobjectionable if it could properly be said that the contract was entered into for the benefit of the employee . . . . In that case the employee would stand on the footing of a secured creditor and it would not lie in the mouth of any other claimant to object to the employee forcing the principal to pay his just obligation, especially as thereby the assets of the insolvent master (the surety) would be exonerated. *Beacon Lamp Co.* v. *Traveler's Co.*, 61 N. J. Eq. 59. The fatal weakness of this position is, that as between the insurer and the insured the employee is unknown. He may not be in the master's employ when the policy is executed; he is not the person intended directly to be benefited, for there is no duty resting upon the master under the usual insurance contract to pay the employee out of the funds realized from the policy. The moneys paid over to the employer by the insured do not constitute a trust fund for the servant's benefit, *Bain* v. *Atkins*, 181 Mass. 240, but are the absolute property of the employer to be disposed of as he pleases." Such moneys paid to an employer are not assets in his hands for the benefit of the employee's estate. *Hawkins v. McCalla*, 95 Ga. 192. And even where a beneficiary may sue upon a contract, and the policy provides that payment shall be made to the assured for the benefit of the injured person, the employee cannot recover directly from the insurance company because of lack of privity. *Embler* v. *Hartford Co.*, 158 N. Y. 43.

Mr. Dowling might have supported his argument that the workman should share with the other creditors, by the law in regard to contracts of reinsurance, which are held to be contracts of indemnity against liability. The reinsurer must pay the reinsured the actual amount of the claim against the latter. *Hone* v. *Mutual Safety Ins. Co.*, 1 Sandf. (N. Y.) 137. But a fund so produced, forming assets of an insolvent insurance company, is distributable *pro rata* to all creditors, the original insured getting no preference. *Goodrich and Hick's Appeal*, 109 Pa. St. 523. *Herckenrath* v. *Am. Ins. Co.*, 3 Barb. Ch. (N. Y.) 63. The similarity of these cases to those brought up by Mr. Dowling is clear.